

The House Committee on Judiciary offers the following substitute to HB 931:

A BILL TO BE ENTITLED

AN ACT

To amend Title 9 of the Official Code of Georgia Annotated, relating to civil practice, and Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, so as to change the penalty for failure to pay ad valorem taxes; to provide for the comprehensive revision of provisions regarding tax executions and redemption of property; to provide for procedures, conditions, and limitations regarding the transfer of tax executions; to change certain provisions relating to procedures for sales under tax levies and executions; to change provisions regarding payment of excess proceeds; to provide for requirements and procedures with respect to certain tax sales; to change certain provisions regarding redemption of property; to provide for additional circumstances under which real estate transfer tax is not due and payable; to change certain provisions relating to transfer of executions; to change certain provisions relating to the use of the county tax digest following certain orders of the state revenue commissioner so as to provide for circumstances when valuations on such digest shall be final; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by striking Code Section 9-13-36, relating to transfer of execution upon payment, status of transferee, and recording necessary to preserve lien, in its entirety and inserting in its place the following:

"9-13-36.

(a) Except as otherwise provided for in subsection (b) of this Code section, whenever

~~Whenever~~ any person other than the person against whom the same has issued pays any execution, issued without the judgment of a court, under any law, the officer whose duty it is to enforce the execution, upon the request of the party paying the same, shall transfer

1 the execution to the party. The transferee shall have the same rights as to enforcing the
2 execution and priority of payment as might have been exercised or claimed before the
3 transfer, provided that the transferee shall have the execution entered on the general
4 execution docket of the superior court of the county in which the same was issued and, if
5 the person against whom the same was issued resides in a different county, also in the
6 county of such person's residence within 30 days from the transfer; in default thereof the
7 execution shall lose its lien upon any property which has been transferred bona fide and for
8 a valuable consideration before the recordation and without notice of the existence of the
9 execution.

10 (b) This Code section shall not be applicable to tax executions. Tax executions shall be
11 governed exclusively by Chapters 3 and 4 of Title 48."

12 SECTION 2.

13 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
14 amended by striking Code Section 48-3-19, which is reserved, and inserting in its place a
15 new Code Section 48-3-19 to read as follows:

16 "48-3-19.

17 (a) As used in this Code section, the term:

18 (1) 'Delinquent taxpayer' means the person or persons against whom an execution has
19 been issued or the successor in title to the property for which the execution has been
20 issued.

21 (2) 'Due diligence' means the performance of a diligent search to ascertain the actual
22 location of a delinquent taxpayer. Actions appropriate to a diligent search may include,
23 but are not limited to: sending notice by first-class mail, certified mail, or statutory
24 overnight delivery, return receipt requested, as required by law; checking telephone
25 directories; checking motor vehicle files; checking voter registration records; checking
26 business license records; checking with mortgage holders or other creditors; interviewing
27 the tenant in possession; interviewing neighbors; or accessing a nation-wide, electronic
28 research data warehouse.

29 (3) 'Execution' means an execution issued for the collection of any ad valorem taxes,
30 special assessments, fees, penalties, interest, or collection costs due the state or any
31 political subdivision thereof.

32 (4) 'Transferee' means a person paying for an execution for the purpose of having that
33 execution and a limited right to enforce collection thereof transferred to him or her.

34 (5) 'Transferor' means the official holding the tax executions and authorized to collect or
35 transfer such tax executions.

(b)(1) Whenever any person other than the person against whom an execution has been issued pays an execution issued for state, county, or municipal taxes or special assessments, the officer whose duty is to enforce the execution may, after 45 days' delinquency, transfer the execution to the party so paying the full value of the execution. No officer whose duty it is to enforce an execution issued for state, county, or municipal taxes or special assessments shall be required to make any transfer or transfers of such execution or executions. The person to whom the execution is transferred shall, within 30 days of the transfer, cause the execution to be entered on the general execution docket of the superior court of the county in which the execution was issued. In default of the required entry or entries, the execution shall lose its lien upon any property which has been transferred in good faith and for a valuable consideration before the entry and without notice of the existence of the execution and additionally shall not be enforceable against any property of the defendant.

(2)(A) It shall be unlawful for any tax official covered by this subsection to pay a tax execution in order to obtain a transfer of the execution under this Code section. It shall be unlawful for any employee of a tax official covered by this subsection to pay a tax execution in order to obtain a transfer of the execution under this Code section. The tax officials covered by this subsection are:

- (i) County tax receivers, tax collectors, and tax commissioners;
- (ii) Members of county boards of tax assessors;
- (iii) Members of county boards of equalization; and
- (iv) County tax appraisers.

(B) Any execution transferred in violation of subparagraph (A) of this paragraph shall be void and unenforceable by the person obtaining the execution and such person's successors in interest.

(C) Any tax official or employee of a tax official violating subparagraph (A) of this paragraph shall be guilty of a misdemeanor.

(c) Upon request by any individual or entity, the tax commissioner shall provide such individual or entity the following statement:

(A) The transferor's process of accepting a request for transfers and the process the transferor will use to award the executions;

(B) The date and time that the transferor will accept a request for a transfer of executions; and

(C) The system the transferor will use to award executions if there are competing requests.

1 (d) A tax official who violates any of the requirements of this Code section may be
2 enjoined by a court of competent jurisdiction from transferring or selling tax executions
3 until found to be in compliance with such requirements and the injunction has been halted
4 by subsequent order of the court.

5 (e)(1) Within 60 days following the transfer, the transferee shall notify the delinquent
6 taxpayer and any new owner, if in the records, of the transfer of the tax execution by
7 first-class mail. The notice shall include:

8 (A) The name, mailing address, and telephone number for the transferee;

9 (B) The amount necessary to satisfy such execution; and

10 (C) The delinquent taxpayer's right of redemption and other rights under this Code
11 section.

12 (2) In the event that any such notice by first-class mail is returned undelivered, the
13 transferee shall be required to perform due diligence in an effort to obtain the delinquent
14 taxpayer's correct address or any new owner's correct address and resend the notice by
15 certified mail or statutory overnight delivery.

16 (f) An execution which has been transferred shall bear interest as specified in Code
17 Section 48-3-20 on the amount paid for such execution from the date of the transfer. In
18 addition, the transferee may charge and collect recording fees actually expended in
19 recording the transferred execution on the general execution docket of any county in which
20 the transfer is recorded and such other penalties as are provided for in this title.

21 (g)(1) Whenever an execution has been transferred to any transferee, the transferee shall
22 not be authorized to submit the execution to the appropriate levying officer until 12
23 months after the date of such transfer or 24 months after the tax giving rise to the
24 execution was originally due, whichever is earlier. A transferee shall not have the right
25 to advertise and sell property under a tax execution. Such right shall remain solely with
26 the appropriate levying official, such as the sheriff or marshal.

27 (2) A transferee with multiple outstanding executions against the same property shall not
28 be subject to the time period requirements of paragraph (1) of this subsection with respect
29 to all such executions if at least one of the executions meets such requirements of
30 paragraph (1) of this subsection.

31 (h) Until the execution is paid in full or satisfied, on or before November 15 of each year
32 after the calendar year in which the transfer occurred, the transferee shall send notice by
33 regular mail to the delinquent taxpayer and the record owner of the property advising that
34 the tax execution is still outstanding. The notice must provide the transferee's most
35 updated contact information, including mailing address and telephone number. Under no
36 circumstances may a transferee, or successor, at any time, charge any fee to the delinquent

1 taxpayer intending to satisfy transferred executions for access to information necessary to
2 make payment to satisfy the transferred execution or executions.

3 (i)(1) A delinquent taxpayer may make payment for tax executions to the transferee or
4 the tax commissioner of the county where such tax execution originated. However, the
5 tax commissioner may only accept payment in the amount equal to the total of the tax bill
6 plus all applicable penalties and interest.

7 (2) If a delinquent taxpayer makes payment to the tax commissioner, then the tax
8 commissioner shall convey the payment to the transferee of record within three days.
9 After the payment is conveyed, the tax commissioner shall issue a satisfaction of the tax
10 execution to the delinquent taxpayer.

11 (j) Prior to submitting an execution to the appropriate levying officer, such as the sheriff
12 or marshal, to advertise and sell a property under a tax execution, a transferee shall send
13 notice to the delinquent taxpayer of the property described on the execution, if different,
14 by first-class mail, return receipt requested, of the transferee's intent to submit such
15 execution to a levying officer. If such notice is returned undelivered, a transferee shall
16 exercise due diligence in locating the delinquent taxpayer and send a second notice to the
17 delinquent taxpayer of the property described on the execution, if different, by certified
18 mail or statutory overnight delivery.

19 (k) The transferee of the tax execution or any affiliate or other entity with common
20 ownership to the transferee bringing the tax execution for levy and sale shall be excluded
21 from bidding at the sale of property under the tax levy in an amount in excess of the
22 amount necessary to satisfy the tax execution, with penalty and interest, and applicable
23 levying costs, or the minimum bid set by the appropriate levying officer, whichever is
24 greater. If a transferee violates this exclusion, the bid amount may be redeemed by any
25 party with an interest in the property with no interest or penalty."

26 **SECTION 4.**

27 Said title is further amended by adding a new subsection at the end of Code Section 48-4-1,
28 relating to procedures for sales under tax levies and executions, to be designated subsection
29 (d), to read as follows:

30 "(d)(1) As used in this subsection, the term:

31 (A) 'Due diligence' means the performance of a diligent search to ascertain the actual
32 identity and location of a delinquent taxpayer. Actions appropriate to a diligent search
33 may include, but are not limited to: sending notice by first-class mail, certified mail, or
34 statutory overnight delivery, return receipt requested, as required by law; checking
35 telephone directories; checking motor vehicle files; checking voter registration records;

checking business license records; checking with mortgage holders or other creditors; interviewing located relatives and neighbors adjacent to the property; or accessing a nation-wide, electronic research data warehouse. The manner and extent of a diligent search remains within the judgment and discretion of the officer conducting the levy and tax sales.

(B) 'Posted notice' means the placement of an appropriate notice as required by law at a conspicuous location at the subject property of the delinquent taxpayer. Such notice shall be not less than 8.5 inches by 11 inches in size and shall be weatherproofed appropriately.

(2) The officer conducting the levy and sale under a tax execution under this Code section shall exercise due diligence in locating the delinquent taxpayer and giving notice of the tax sale. In addition to the notice otherwise required under this Code section and at least ten days before the tax sale, the transferor, sheriff or marshal, tax commissioner, tax collector, or officer selling the property shall provide written notice personally to the tenant in possession, if present, or if not present, shall post the notice in a conspicuous location at the property which is the subject of the tax levy and sale which:

(A) Shall contain the name and mailing address of the tax commissioner, tax collector, sheriff, or other officer to which payment shall be made and state the amount necessary to satisfy such execution or executions;

(B) Shall advise the delinquent taxpayer where the payment necessary to satisfy such execution may be made; and

(C) May contain such other information as the officer desires to include."

SECTION 5.

Said title is further amended by striking Code Section 48-4-5, relating to payment of excess proceeds of a tax sale by a tax commissioner or tax collector, and inserting in its place a new Code Section 48-4-5 to read as follows:

"48-4-5.

(a) If there ~~is~~ are any excess funds after paying taxes, costs, and all expenses of a sale, ~~the tax commissioner or tax collector may file an interpleader action in superior court for the payment of the amount of such excess. Such excess shall be distributed by the superior court to intended parties, including the owner as their interest appears and in the order of priority in which their interest exists~~ made by the tax commissioner, tax collector, or sheriff, or other officer holding excess funds, the officer selling the property shall give written notice of such excess funds to the record owner of the property at the time of the tax sale and to the record owner of each security deed affecting the property and to all other

parties having any recorded equity interest or claim in such property at the time of the tax sale. Such notice shall be sent by first-class mail within 30 days after the tax sale. The notice shall contain a description of the land sold, the date sold, the name and address of the tax sale purchaser, the total sale price, and the amount of excess funds collected and held by the tax commissioner, tax collector, sheriff, or other officer. The notice shall state that the excess funds are available for distribution to the owner or owners as their interests appear in the order of priority in which their interests exist.

(b) The tax commissioner, tax collector, sheriff, or other officer may file, when deemed necessary, an interpleader action in superior court for the payment of the amount of such excess funds. Such excess funds shall be distributed by the superior court to the intended parties, including the owner, as their interests appear and in the order of priority in which their interests exist. The cost of litigation such an interpleader action, including reasonable attorney's fees, shall be paid from the excess funds upon order of the court.

(c) After five years have elapsed from the tax sale date, the tax commissioner, tax collector, sheriff, or other officer holding excess funds shall pay over to the department any excess unclaimed funds and for which no action or proceeding is pending in a claim for payment. Once excess funds are placed in the possession of the department, only a court order from an interpleader action filed in the county where the tax sale occurred, by the claimant for the funds, shall serve as justification for release of the funds."

SECTION 6.

Said title is further amended by striking Code Section 48-4-44, relating to quitclaim deeds by purchaser, and inserting in lieu thereof a new Code Section 48-4-44 to read as follows:

"48-4-44.

(a) In all cases where property is redeemed, the purchaser at the tax sale shall make a quitclaim deed to the defendant in fi. fa., which deed shall recite:

(1) The name of the person who has paid the redemption money; and

(2) The capacity in which or the claim of right or interest pursuant to which the redemption money was paid.

(b) The recitals required by subsection (a) of this Code section shall be prima-facie evidence of the facts stated.

(c) If the quitclaim deed provided for in subsection (a) of this Code section is presented to the purchaser at the time such person accepts such redemption money, the purchaser shall, at that time, sign the quitclaim deed if a notary public and an unofficial witness are present to witness such signature.

1 (d) If no quitclaim deed is presented at the time of the redemption or if sufficient witnesses
2 are not present, it shall be the responsibility of the purchaser to prepare and properly
3 execute such quitclaim deed as is required by law within seven days from the date of the
4 redemption.

5 (e) It shall be the responsibility of the purchaser once the quitclaim deed is properly
6 executed as required in subsection (d) of this Code section to present such deed for
7 recordation to the clerk of the court within ten days of the redemption. The quitclaim deed
8 shall be presented for recordation in the county where the tax sale originally occurred. The
9 purchaser shall pay all recording costs and return the recorded quitclaim deed to the
10 redeemer."

11 **SECTION 7.**

12 Said title is further amended in Code Section 48-4-45, relating to notice to foreclose right to
13 redeem, by adding a new subsection immediately following subsection (c), to be designated
14 subsection (d), to read as follows:

15 "(d) The foreclosure of the right to redeem property acquired through a tax sale, as provided
16 in this title, shall not divest the state or any county or municipality of its lien for taxes in
17 any respect as against the property described on the execution or against any defendant."

18 **SECTION 8.**

19 Said title is further amended in Code Section 48-6-2, relating to exemptions from real estate
20 transfer tax, by adding a new paragraph immediately following paragraph (8) of subsection
21 (a), to be designated paragraph (8.1), to read as follows:

22 "(8.1) Any deed that seeks to return any property sold at a tax sale back to the defendant
23 in fi. fa.;"

24 **SECTION 9.**

25 This Act shall become effective on July 1, 2006.

26 **SECTION 10.**

27 All laws and parts of laws in conflict with this Act are repealed.